



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 6, 1997

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-0287

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103726.

The Texas Department of Public Safety (the "department") received a request for various information pertaining to the Narcotics Lieutenant Oral Interview Board (the "Board"), a department promotional process, and questions the Board asked of candidates for the position of Narcotics Lieutenant in October of 1996. You say the department will release all of the requested information to the requestor, with the exception of item four, a "list of questions presented to the Personnel Bureau for approval" and item five, a "list of the questions approved by the Personnel Bureau, to be utilized by the . . . [B]oard." You assert that items four and five are excepted from required public disclosure based on Government Code section 552.122(b).

Section 552.122(b) states as follows:

A test item developed by a licensing agency or governmental body
is excepted from [required public disclosure].

The term "test item" in section 552.122 generally includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. Open Records Decision No. 626 (1994) at 6. "Test item" does not include an annual evaluation given an employee by his supervisor in which the supervisor rates the employee's performance and

notes any areas needing improvement. *Id* at 8. Nor does the term include interview board member notes concerning an employee's background, appearance, demeanor and responses to questions. *Id*. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id*.

You inform us that a number of the questions used by the Board are used by the interview boards for other law enforcement positions. We have reviewed the information at issue, exhibits 1 and 3. We agree that section 552.122(b) applies to portions of these exhibits. However, we do not believe every question evaluates the candidates' knowledge or ability in a particular area. We, therefore, do not believe every question is a "test item" for purposes of section 552.122(b). We have marked the exhibits accordingly.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 103726

Enclosures: Marked documents

cc: Mr. Wilmon C. Smith
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(w/o enclosures)